

NO. 24-7642

UNITED STATES COURT OF APPEALS FOR THE  
NINTH CIRCUIT

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MICHELLE J. KINNUCAN,

Appellant,

v.

NATIONAL SECURITY AGENCY; CENTRAL  
INTELLIGENCE AGENCY; DEFENSE INTELLIGENCE  
AGENCY; and DEPARTMENT OF DEFENSE,

Respondents.

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On Appeal from United District Court for the Western  
District of Washington, Seattle (No. 2:20-cv-1309 MJP)

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**MOTION TO STRIKE NOTICE OF APPEARANCE  
FILED IN ERROR OR, ALTERNATIVELY, FOR  
LEAVE TO WITHDRAW**

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Attorney Jeffery Wheat respectfully moves the Court pursuant to Ninth Circuit Rules 27-1 and 46 to strike the Notice of Appearance filed on April 14, 2025 (Dkt. No. 18), or in the alternative, to grant leave to withdraw said appearance. The appearance was entered inadvertently while assisting co-counsel with e-filing technical issues and does not reflect any intent to represent the Appellant in this matter.

### **FACTUAL BACKGROUND**

On the evening of April 14, 2025, attorney Kyle Berti, counsel for Amicus Curiae USS Liberty Veterans Association, encountered access issues with the Court's electronic filing system or a lapse in his CM/ECF account authorization. In order to ensure the timely filing of a Motion for Leave to File an Amicus Curiae Brief and the associated brief, Mr. Berti requested the assistance of a colleague whom he knew to have a login: Mr. Jeffery Wheat.

Mr. Wheat agreed to assist and filed the documents using his CM/ECF credentials. However, due to a

misunderstanding, Mr. Wheat mistakenly selected “Appellant” as the party represented (presuming Mr. Berti was not representing Respondent in this case) to file the documents forwarded by Mr. Berti. In reality, Mr. Wheat’s involvement was strictly limited to facilitating the electronic filing on behalf of Amicus Curiae and not on behalf of Appellant Michelle Kinnucan.

### **RELIEF REQUESTED**

Accordingly, Mr. Wheat respectfully requests that the Court:

Strike the Notice of Appearance entered on April 14, 2025 (Dkts. No. 18 & 21) as having been filed in error; or,

In the alternative, grant leave for Mr. Wheat to formally withdraw from representation. Mr. Wheat has communicated with Mr. Caesar Kalinowski, attorney for the appellant, who agreed to the withdrawal or striking of the notice.

This motion is supported by the declarations of attorneys Kyle Berti and Jeffery Wheat, filed concurrently herewith.

Respectfully submitted this 15th day of April, 2025.

/s/ Jeffery Wheat  
Jeffery Wheat, WSBA No. 54228  
Miller Wheat Law  
1201 3rd Ave Ste 22-120  
Seattle, WA  
Email: info@wheatlegal.com  
Phone: (206) 262-7381  
*Attorney for Amicus Curiae*  
*USS Liberty Veterans Association*  
*(Limited Appearance for*  
*E-Filing Purposes Only)*

**SUBJOINED DECLARATION OF KYLE BERTI IN  
SUPPORT OF MOTION**

I, Kyle Berti, declare as follows:

I am an attorney licensed in the State of Washington,  
WSBA No. 57155, and represent Amicus Curiae USS  
Liberty Veterans Association in the above-captioned  
matter.

On April 14, 2025, I attempted to electronically file a  
Motion for Leave to File an Amicus Curiae Brief and the  
proposed brief. Due to a lapse in my CM/ECF access, I  
was unable to complete the filing.

To ensure timely submission before the filing deadline, I requested my colleague Jeffery Wheat to submit the documents on my behalf using his own CM/ECF account. Mr. Wheat agreed to assist solely for the purpose of electronically filing the documents. His involvement was not intended as an appearance on behalf of the Appellant or for any ongoing representation.

It is my understanding that Mr. Wheat inadvertently entered an appearance for the Appellant while attempting to file the amicus brief.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 15th day of April, 2025, in Seattle, Washington.

/s/ Kyle Berti  
Kyle Berti, WSBA No. 57155  
Law Office of Catherine C. Clark PLLC  
110 Prefontaine Place South, Suite 304  
Seattle, WA 98104  
Email: kyle@loccc.com

**SUBJOINED DECLARATION OF JEFFERY  
WHEAT IN SUPPORT OF MOTION**

I, Jeffery Wheat, declare as follows:

I am an attorney licensed in the State of Washington, WSBA No. 54228, and I maintain an active CM/ECF filing account with the Ninth Circuit.

On the evening of April 14, 2025, I was contacted by attorney Kyle Berti to assist with filing a Motion for Leave to File an Amicus Curiae Brief and the proposed brief on behalf of Amicus Curiae USS Liberty Veterans Association.

Mr. Berti advised me that he was unable to access his CM/ECF account due to reauthorization issues and asked if I would file the documents on his behalf.

I agreed to file the brief and supporting motion using my credentials. While doing so, I mistakenly selected “Appellant” as the represented party, believing that was required to complete the submission. I mistakenly understood his pronunciation of “Amici” to be a “EMCE brief,” perhaps an acronym for a federal statute I was unfamiliar with. I did not realize the error until I opened the brief to review it before filing.

I had no intent or authority to represent the Appellant and my role was strictly limited to assisting with electronic filing for the *amici* motion. Therefore, my appearance entry was made in error. A true and correct copy of the email received with the docket entry in error which is sought to be stricken is attached hereto as

**Exhibit A.**

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 15th day of April, 2025, in Seattle, Washington.

/s/ Jeffery Wheat  
Jeffery Wheat, WSBA No. 54228  
Miller Wheat Law  
1201 3rd Ave Ste 22-120  
Seattle, WA 98101  
Email: [info@wheatlegal.com](mailto:info@wheatlegal.com)

**EXHIBIT A**



Jeffery Wheat &lt;jeff@wheatlegal.com&gt;

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**[from info@wheatlegal.com] Kinnucan v. National Security Agency, et al. 24-7642 - 018 - Notice of Appearance**

1 message

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**ACMS@ca9.fedcourts.us** <ACMS@ca9.fedcourts.us>  
To: info@wheatlegal.com

Mon, Apr 14, 2025 at 8:26 PM

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**United States Court of Appeals for the Ninth Circuit****Notice of Docket Activity**

The following transaction was entered on 04/14/2025 8:24:19 PM PDT and filed on 04/14/2025

**Case Name:** Kinnucan v. National Security Agency, et al.**Case Number:** [24-7642](#)**Docket Text:****NOTICE OF APPEARANCE** by Jeffery Myra Wheat for Appellant Michelle J. Kinnucan. [Entered: 04/14/2025 08:25 PM]**Notice will be electronically mailed to:**

Caesar D. Kalinowski ; [tammymiller@dwt.com](mailto:tammymiller@dwt.com), [caesarkalinowski@dwt.com](mailto:caesarkalinowski@dwt.com), [seadocket@dwt.com](mailto:seadocket@dwt.com)  
Ms. Marietta Catsambas ; [mariettacatsambas@dwt.com](mailto:mariettacatsambas@dwt.com)  
Mr. Thomas R. Burke Esquire; [ryanrubio@dwt.com](mailto:ryanrubio@dwt.com), [ayshalewis@dwt.com](mailto:ayshalewis@dwt.com),  
[thomasburke@dwt.com](mailto:thomasburke@dwt.com)  
Katie Denise Fairchild ; [paul.albert.kidd@usdoj.gov](mailto:paul.albert.kidd@usdoj.gov), [joseph.fonseca@usdoj.gov](mailto:joseph.fonseca@usdoj.gov),  
[john.price2@usdoj.gov](mailto:john.price2@usdoj.gov), [usawaw.appeal@usdoj.gov](mailto:usawaw.appeal@usdoj.gov), [caitlin.froelich@usdoj.gov](mailto:caitlin.froelich@usdoj.gov),  
[katie.fairchild@usdoj.gov](mailto:katie.fairchild@usdoj.gov), [caseview.ecf@usdoj.gov](mailto:caseview.ecf@usdoj.gov)  
Mr. Michael Shih ; [michael.shih@usdoj.gov](mailto:michael.shih@usdoj.gov), [civilappellate.ecf@usdoj.gov](mailto:civilappellate.ecf@usdoj.gov)  
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Jeffery Myra Wheat : Attorney; [info@wheatlegal.com](mailto:info@wheatlegal.com)

**Case participants listed below will not receive this electronic notice:**